

89-1148



No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1989

SUNG MAN KIM, et ux.,

Appellants,

v.

SOO AN LEE, et ux.,

Appellees.

On Appeal From the District of Columbia

Court of Appeals

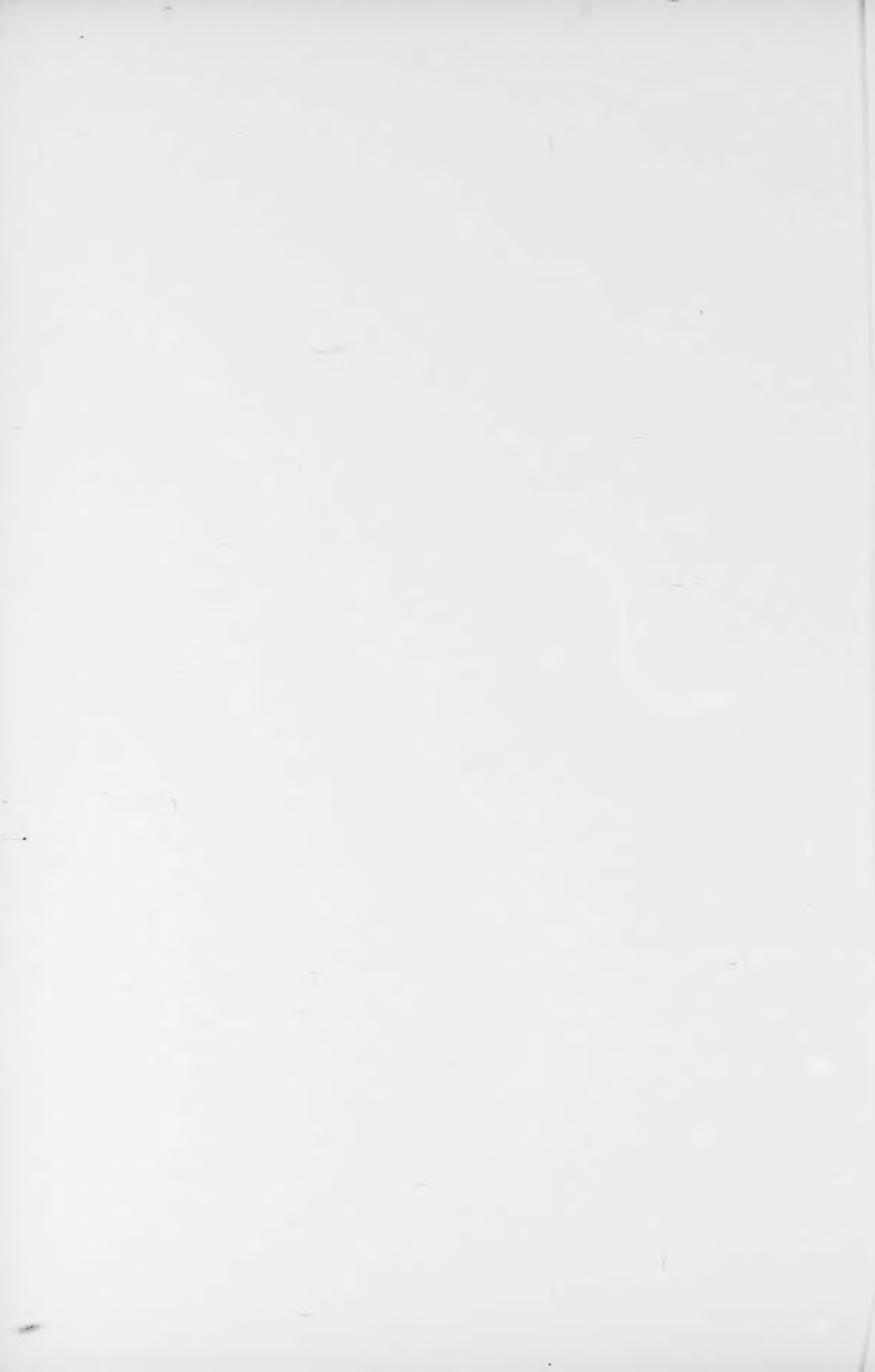
JURISDICTIONAL STATEMENT

Appellants, Pro Se

SUNG MAN KIM and

POONG JA KIM

- 5515 N. 24th Street
Arlington, VA 22205
(703) 532-5532



QUESTIONS PRESENTED

Whether the Superior Court of District of Columbia violates a statute of the United States, 84 Stat. 549, and the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment by exercising jurisdiction over nonresident defendants without any basis consistent with the United States Constitution for the exercise of personal jurisdiction over the nonresident defendants and whether the said court violates the said Clauses of the Fourteenth Amendment by rendering orders without due process of law to deprive nonresident defendants of rights and property and by ignoring fraud upon the court perpetrated by its officer in the course of obtaining the consent orders.

LIST OF PARTIES

In addition to the parties named in the caption, the other party to the proceeding below was Copy-Land, Inc., non-existent corporation.

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JURISDICTIONAL STATEMENT

Appellants appeal from the final order of District of Columbia Court of Appeals entered on September 1, 1989, dismissing appellants' appeal to dismiss the complaint on ground of lack of jurisdiction and to set aside the orders on ground of fraud upon the court and of void judgment.

OPINIOS BELOW

The findings of fact and conclusions of law of District of Columbia Court of Appeals are not officially reported and the order contains no opinion.

JURISDICTION

This appeal arises from an appeal to dismiss the complaint on ground of lack of jurisdiction and to vacate the orders

on ground of fraud upon the court,
perpetrated by its officer.

The order of District of Columbia
Court of Appeals was entered
on September 1, 1989.

A timely notice of appeal was filed on
November 30, 1989, in Superior Court of
District of Columbia and District of
Columbia Court of Appeals.

The jurisdiction of this Court is
invoked under U.S.C. § 1257 (1) and the
Rule 60 (b) of Federal Rules of Civil
Procedure.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitutional Provision involved
is the Due Process and the Equal
Protection Clause of the Fourteenth
Amendment to the United States

Constitution, reads as follows:

... [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of laws.

The Statutory Provisions involved are 84 Stat. 549 (Subchapter II. - Bases of Personal Jurisdiction Over Persons Outside the District of Columbia., § 13-423. Personal Jurisdiction based upon conduct), and Rule 60 (b) , Federal Rules of Civil Procedure, and read as follows:

§ 13-423. Personal Jurisdiction based upon conduct.

- (a) A District of Columbia court may exercise personal jurisdiction over

a person, who acts directly or by an agent, as to a claim for relief arising from the person's -

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia;

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

84 Stat. 549 (1970), Pub. L. 91-358.

...This Rule does not limit the power of a court to entertain an independent action to relieve a

party from a judgment, order, or proceeding to set aside a judgment for fraud upon the court.

Rule 60 (b), Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

On August 16, 1985, appellees filed the complaint against appellants, non-resident defendants, and nul tiel corporation, Copy-Land, Inc., for liquidation of assets and business of corporation, dissolution thereof, receivership, and other relief without asserting basis of jurisdiction over nonresident defendants and the said nul tiel corporation for the Superior Court of District of Columbia, which is required by the Statute of the United

States and the long-arm statute of the District of Columbia, in order to deprive appellants of property, liberty, and business by means of fraud upon the court, by and through their attorney, in obtaining jurisdiction over nonresident defendants, appellants, and in obtaining consent order to put appellatants' property and business under injunction and receivership.

The record of the case proves the facts as foolows:

1. Appellees state in paragraph 2 of the complaint that appellants are residents of the State of Virginia and appellees are residents of the State of Maryland.

But appellees' complaint failed to state the basis for jurisdiction over

appellants for the Superior Court of District of Columbia.

Burden of proof is on plaintiff to show for assertion of long-arm jurisdiction.

Lott v. Burning Tree Club, Inc., 516 F. Supp. 913 (D.D.C. 1980).

Appellees produced no proof to show the basis of jurisdiction over appellants for Superior Court of District of Columbia to exercise.

Notice and hearing together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of due process of law.

Powell v. Alabama, 287 US 45, 53 S. Ct 55.

2. Appellees state in paragraph 18 of

the complaint that they advanced sums of money to appellants, but they failed to state the date and the place of the said transaction as required by Rule 9 (f), Superior Court Rules of Civil Procedure and § 13-423 of D.C. Code (84 Stat. 549 (1970)), which was enacted by the United States Congress to permit the exercise of personal jurisdiction over nonresident defendants to the extent permitted by the due process of the United States Constitution, reads as follows:

§ 13-423. Personal jurisdiction based upon conduct.

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's -

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia;

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

84 Stat. 549, Pub. L. 91-358, (1970),

§ 13-423., D.C. Code.

Rule 9. Pleading special matters.

(f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

Rule 9 (f), Superior Court Rules of
Civil Procedure.

Section 13-423 permits the exercise of personal jurisdiction over nonresident defendants to the extent permitted by the due process clause of the United States Constitution.

Environmental Research Int'l, Inc. v.
Lockwood Greene Eng'rs, Inc., App. D.C.,
355 A. 2d 808 (1976).

Therefore, appellees' failure to assert the time and the place of the transaction of which they complain permits no basis for Superior Court of District of Columbia to exercise jurisdiction over appellants by the Section 13-423 of D.C. Code, and therefore, Superior Court of District of Columbia violates the said Statute of the United States and the Due Process Clause of the Fourteenth to the

Constitution by exercising jurisdiction over appellants, which is not permitted by its long-arm statute and the United States Constitution.

3. Appellees state in paragraph 17 of the complaint that they advanced sums of money, the same transaction they allege in paragraph 18 mentioned above, to Copy-Land, Inc. without producing any evidence. And they also failed to state the time and the place of the said advancement of which they complain.

Appellees~~s~~ allege in paragraph 21 of complaint that there was no organization or stockholders' meeting has been held for Copy-Land, Inc., and it has no duly elected and qualified officers and directors. Copy-Land, Inc. has had no stockholders, assets, business record. business transaction, or registration to

do business in District of Columbia.

Copy-Land, Inc. was not incorporated when the transation of which appellees complain occurred.

The transaction of which appellees complain were occurred in the State of Virginia between appellant Sung Man Kim and appellee Soo An Lee on August 22, 1984, September 17, 1984, Octover 15, 1984, and January 29, 1985, and Copy-Land, Inc. was merely incorporated on February 22, 1985.

Appellants proved this fact with documentary evidence, promissory notes and receipts thereof signed by the said appellant and appellee, and they were attached to the Motion to Dismiss the Complaint on Ground of Lack of Jurisdiction filed on June 25, 1987, and the said documentary evidence to show the

dates of the said transaction of which appellee complain can be found on pages 175, 176, 177, 178 and 179 of the record on appeal in District of Columbia Court of Appeals.

Documentary evidence proves that it was not possible for appellee to transact any business with Copy-Land, Inc. which had not been incorporated at the time of the transaction of which they complain occurred.

Appellees allege under oath in paragraph 17 of the complaint that they advanced sums of money to Copy-Land, Inc. without stating the time and the place of such transaction, even though it was required by Rule 9 (f), Superior Court Rules of Civil Procedure.

Documentary evidence of the record proves that appellees made false statement

under oath to Superior Court of District of Columbia in order to obtain jurisdiction over nonresident defendants, appellants, and nul tiel corporation, Copy-Land, Inc. and that is why appellees have failed and refused to state the dates and the places of the transaction of which they complain even though they were requested by appellants' interrogatories.

4. Documentary evidence of the record proves, as stated above, that Superior Court of District of Columbia has no jurisdiction over appellants and Copy-Land, Inc. as follows:

(1) Neither appellants nor appellees were residents of District of Columbia when the transaction of which appellees complain occurred.

(2) Copy-Land, Inc. was not even incorporated when the transaction of which

appellees complain occurred.

(3) Appellants had no contacts at all with District of Columbia when the transaction of which appellees complain occurred.

(4) Appellees completely failed to assert and aver the basis of jurisdiction over appellants and Copy-Land, Inc.

(5) Appellees failed and refused to state the time and the place of the transaction of which they complain.

(6) Appellees, as well as their attorney, have not refuted the documentary evidence and the facts, stated above.

5. All the issues stated above was fully presented by appellants with the motion to dismiss the complaint on ground of lack of jurisdiction to Superior Court of District of Columbia and District of Columbia Court of Appeals.

6. On November 26, 1985, appellees obtained a consent order in order to put appellants' property and business under injunction and receivership by forging appellants' signatures and by filing forgery in Superior Court of District of Columbia by and through their attorney:

(1) On November 26, 1985, appellees' attorney, James S. Williford, Jr. filed motion for consent order, solely prepared by him, in order to obtain consent order to put appellants' property of over \$80,000 and business under injunction and receivership.

(2) On the said motion for consent order appellees' attorney made not only appellees' signatures but also appellants' signature without appellants' knowledge and authorization.

(3) Appellees' attorney omitted

Copy-Land, Inc. on the face of the said motion for consent order.

(4) Appellees' attorney knew that appellants would not sign the motion for consent order to put their own property and business under injunction and receivership and that it is impossible for him to get signature of nul tiel corporation, Copy-Land, Inc. and that is why appellees' attorney forged appellants' signatures and omitted Copy-Land, Inc. as a party of the case, on the face of the motion for consent order.

(5) Copy-Land, Inc., even though it was fraudulently joined as a party of the case by appellees, is an indispensable party for appellees' standing because they sought for liquidation of assets and business of corporation with allegation of the advancement of sums of money to it as

paragraph 17 of the complaint shows, and it is impossible for any party of the case to obtain consent order without joining Copy-Land, Inc. as required by Rule 68-I, Superior Court Rules of Civil Procedure, reads as follows:

(c) Consent of counsel. The clerk also have authority to enter judgment by consent without judicial approval by stipulation signed by the attorneys for all the parties in any pending case.

Rule 68-I. Judgement by confession or consent., Rules of Superior Court of Civil Procedure.

(6) Appellees' attorney obtained the consent order from Superior Court of District of Columbia on the same date he filed the motion for consent order, by filing the forged motion for consent order, which contains forged signatures

of appellants and the omission of Copy-Land, Inc., with full knowledge thereof.

(7) Appellees' attorney also forged appellants' signature and omitted Copy-Land, Inc. on the consent order.

(8) Appellees' attorney, James S. Williford, Jr. has admitted in writing that he made unauthorized signatures of appellants on the said motion for consent order and the said consent order.

(9) Forging appellants' signature and the omission of Copy-Land, Inc. on the face of the said motion for consent order and on the said consent order speaks for themselves that crime of forgery and fraud upon the court were committed by appellees' attorney.

7. D.C. Courts' decisions denying appellants' motion to vacate the consent order on ground of fraud upon the court

were so malicious because the fraud upon the court perpetrated by appellees' attorney was proved by the record, the said motion for consent order and the said consent order, as stated above.

And this fact supports appellants' contention that they were denied the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by D.C. Courts.

8. Except obtaining the said consent order to put appellants' property of over \$80,000 and business under injunction and receivership, appellees did not seek any further disposition so far.

9. But appellants were kicked out of his business by the receiver on charge of unlawful entry and the receiver caused appellant Sung Man Kim to be arrested and imprisoned twice on charge of unlawful

entry while he was conducting business in his own business.

10. The receiver deprived appellants of their property of over \$80,000 and the business under sham authority given by the said consent order.

11. There was no hearing on the merits in this case.

12. All the issues stated above was fully presented by appellants with motion to vacate the order on ground of fraud upon the court to Superior Court of District of Columbia and District of Columbia Court of Appeals.

ARGUMENT

This Court should summarily dismiss the case and reverse the decisions below because the record proves that it is violative of the said United States

Statute and that it is unconstitutional for Superior Court of District of Columbia to exercise jurisdiction over appellants as being in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

It is required for this Court to have plenary consideration , with briefs on the merits and oral argument, for their resolution because this appeal involves the issue of integrity of the court.

CONCLUSION

For the reasons set forth hereinabove, appellants respectfully request that this Court to dismiss the case and to enter an order to set aside the orders on ground of fraud upon the court and of void judgment entered by Superior Court

of District of Columbia.

Respectfully submitted,

Sung Man

Poong Ja Kim

Appellants, Pro Se

SUNG MAN KIM and

POONG JA KIM

5515 N. 24th Street
Arlington, VA 22205

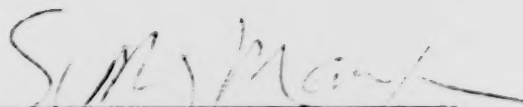
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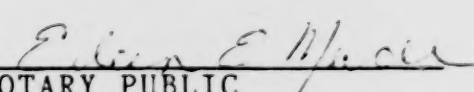
STATE OF VIRGINIA)
) to-wit:
COUNTY OF ARLINGTON)

SUNG MAN KIM, being duly sworn on oath,
under penalty of perjury, says that he
verily believes the facts in the above

Jurisdictional Statement to be true and that he served by certified mail on November 30, 1989, three copies of the Jurisdictional Statement received by this Court on November 30, 1989, and that he also served by certified mail three copies of this Jurisdictional Statement on each of appellees' attorneys on December 19, 1989, pursuant to Rule 28, Rules of the Supreme Court of the United States .


SUNG MAN KIM, Appellant

SUBSCRIBED AND SWORN to before me on this 19th day of December, 1989.


NOTARY PUBLIC

My commission expires: August 17, 1992

APPENDIX A

SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA

C.A. No. 5937-85

SOO AN LEE, et al, Plaintiffs

v.

SUNG MAN KIM, et al, Defendants

Filed: July 30, 1987

ORDER

UPON CONSIDERATION of the following
motions filed by the defendants, SUNG MAN
KIM and POONG JA KIM:

1. Motion to vacate and strike the
Court's June 11, 1986 Order on Ground of
Fraud Upon the Court, and of Void
Judgment under Rule 60(b) (3), (4),
S.C.R., Civil;

2. Motion to vacate and strike the
Court's September 26, 1985 Order on
Ground of Fraud Upon the Court, and of

Void Judgment Under Rule 60(b) (3), (4),
S.C.R., Civil;

3. Motion to vacate and strike the
Court's November 26, 1985 Consent Order
on Ground of Fraud Upon the Court, and
of Void Judgment under Rule 60(b), (3),
(4), S.C.R., Civil; and

4. Motion to Dismiss, Presenting
Defenses of Failure to State a Claim, of
Lack of Jurisdiction and of Illegality
under Sections 13-422, 13-423, and 28-
3502 of D.C. Code and Rule 12 (h) and
23.1, S.C.R.-Civil; the opposition filed
hereto by the plaintiffs and the
Receiver, and the record of this case
it appearing the order of April 1, 1987
followed review of the orders in question
and finally disposed of them, it is this
30th day of July, 1987,

ORDERED, that all of the aforesaid

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motions be, and hereby are, denied.

JUDGE RUFUS KING ,III

APPENDIX B

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 87-1008

SUNG MAN KIM, ET AL., Appellants,

v.

SOO AN LEE, ET AL., Appellees.

CA05937-85

BEFORE: Mack, Newman, and Farrell,
Associate Judges.

ORDER

On consideration of appellees' motion to dismiss appeal, alternative motion for summary affirmance, the receiver's motion to dismiss the appeal or for summary affirmance, and appellants' verified

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response to the motion to dismiss appeal,
alternative motion for summary affirmance,
it is

ORDERED that the motions to dismiss
this appeal are granted, and this appeal
is dismissed.

PER CURIAM.

Filed: September 1, 1989 —

APPENDIX C

DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 87-1008

SUNG MAN KIM, et ux., Appellants

v.

SOO AN LEE, et ux., Appellees

NOTICE OF APPEAL

Notice is hereby given that the
appellants hereby appeal to the Supreme
Court of the United States from the

final judgment of the District of Columbia Court of Appeals dismissing the appellants' appeal entered on September 1, 1989.

This appeal is taken pursuant to 28 U.S.C. § 1257 (1) and Rule 60 (b), Federal Rules of Civil Procedure.

Appellants, SUNG MAN KIM and
POONG JA KIM

APPENDIX D

84 Stat. 549

PUBLIC LAW 91-358-JULY 29, 1970

"SUBCHAPTER II. - BASES OF PERSONAL
JURISDICTION OVER PERSONS OUTSIDE THE
DISTRICT OF COLUMBIA

"§ 13-423. Personal jurisdiction based

upon conduct

"(a) A District of Columbia Court may exercise personal jurisdiction over a person , who acts directly or by an agent, as to a claim for relief arising from the person's -

"(1) transacting any business in the District of Columbia;

"(2) contracting to supply services in the District of Columbia;

"(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

